PRESERVED

App. F. IX-4

1941 (Legis)

File No. 59/38-41

Serial Nos. 2

Previous References.

Pris. 77-39-1,2,4,7.

Pris. 2-42-19.

Later References.

GENERAL AND REVENUE SECRETARIAT

Serial Nos.

Part B for NOV 1942

SUBJECT

Opinions of the High Court Judges on the following Prisons Reforms Bills. 1) Prisons Bill, 2) Borstal School Bill 3) Children Bill, 4) Prohibition of Liquor [illegible]

PRISONS

Reforms —— Bills

General and Revenue Secretariat | File No. | of 194 | [App. F III—2

Serial No.

Extract from File : Prisons Reforms Bill - R.A.Session 12 October 1941.

x x x x

(1), (2) and (3) may be introduced. The Prisons Bill may ~~be~~ lie over for the subsequent session.

All the four bills (including the Prisons Bill~~s~~)may be introduced. The Bill as such does not involve financial commitments.

Id/- A.V.N.
15-9-41.

This is a council matter and may be disposed of~~f~~ by circulation.

In the meantime, the copies of the Bills will be sent to the R.A. to get them printed and sent to members within the prescribed time.

Dewan) Id/- H.V.N.
15/9

Yes. The High Court may also be consulted an their suggestions if any may be taken into consideration before the bill goes before the Legislative Council.

Id/- N.M.
16/9/41.

Draft letter to the Registrar, High Court is submitted for appl.

16/9/41

Seen personally before issue.

17/9/41

Dom — Asst Secy (Prots)

Issued letter No. P.1197 dated 17th Sept. 1941 to the Regr. High Court.

Draft 17/9/41

NOTE—Contn. Sheet.

WD 03967—GPB—5,000—30-8-41

PRI/3764/44 1944

File No. Bills of 194

General and Revenue Secretariat

A reminder should have been issued long back, and the file should not have been kept in suspension without issuing a reminder for so long. The Sus clerk will be more careful in future. A reminder may issue today to the High Court.

MKV 29/4

Draft reminder together with its fair copy is submitted for Appl's kind signature.

29/apr

Issue MKV 29/4

Issued letter No PL 923 dated 29.4.44.

From

The Registrar, High Court

Letter No 72/42-43 dated 29.8.1942 forwarding the opinions of the Puisne Judges on the draft bills.

Sir A 29/4

—— // ——

All the Puisne Judges agree that the improvements & reforms embodied in the draft bills may be adopted with slight changes in respect of certain minor details.

These modifications may perhaps become apparent when the bills are gone into by Select Committee. Submitted for order.

31/8/Mar

Serial No.

With the exception of Mr. C. Subramanya Iyer, J. who considers the enactment of the four bills as desirable and necessary measures of legislation and the Chief Justice who has not been able to offer his views, the other Judges have given their opinion in respect of certain clauses of the four Bills, which are as follow:--

I. The Mysore Prisons Bill.

1. Clause 26(3)--This clause provides that "no prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the Medical Officer, such discharge is safe". Adl-ul-Mulk Mr. Justice C. A. Ghani, J. suggests that the clause may be omitted as it is not apparent why a prisoner may not be discharged against his will. The clause however is not a new one, but only a reproduction of the third paragraph of Section 29 of the Prisons Act of 1870 as in force in Mysore and Section 26 (3) of the later British Indian Enactment of 1894. There does not therefore appear to be any harm in retaining it. It provides for those rare cases where on account of the dangerous physical condition of the prisoner it would be desirable not merely in his own interest but in that of Society also, not to discharge him without his consent. Even in England no prisoner suffering from an acute or dangerous illness may be discharged unless he demands his release. (Halsbury's Laws of England, Vo. ~~10~~ 24, page 190). The clause may therefore be retained.

04155—GPB—55,000—23-10-41

Serial No.

2. Clause 27(1)--This clause provides that "in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with the male prisoners". Adl-ul-Mulk Mr. Justice Ghani, suggests that the words "seeing or" may be omitted from the clause, as the rest of the clause is by itself quite sufficient to carry out the object of effective separation of female from male prisoners. The object of the clause, however, is not merely effective separation, but separation in such manner as to preclude even the possibility of female prisoners seeing male prisoners. The words proposed for omission occur moreover, in Section 30(1) of the Prison Act of 18.. and Section 27 (1) of the Act of 1894, both of which correspond to Clause 27(1) of the Prisons Bill. They may, therefore, be retained.

3. Clause 33(1)--This clause provides for the supply of clothing and bedding to civil and unconvicted criminal prisoners. In the body of the clause however the words "convicted criminal prisoner" have been printed instead of "unconvicted criminal prisoners". Rajadharmaprasakta Mr. Justice Singaravelu Mudaliar and Mr. Justice Venkataranga Iyengar point out this misprint. It will be corrected.

4. Clause 33(2)--This clause is with slight verbal additions the same as the second paragraph of Section 36 of the Prisons Act of 1870 and is a reproduction of the later Act of 1894. It provides that when any civil prisoner has been committed to prison in execution

Serial No.

execution of a decree in favour of a private person, such person, or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner and in default of such payment the prisoner may be released.

This clause thus deals with the clothing and bedding of civil prisoners. As regards subsistence allowance to them section 57 of the Code of Civil Procedure empowers Government to fix scales graduated according to rank, race and nationality of monthly allowance payable for the subsistence of Judgment debtors. The scale of such allowance has been fixed by Government at Rs. 20/- per mensem for the first class and Rs. 12/- per mensem for the second class. According to Rule 39 of Order XI of the Code of Civil Procedure, the subsistence allowance shall be supplied by the party, on whose application the Judgment debtor has been arrested, by monthly payments in advance before the first day of each month, and the first of the payments in advance for such portion of the current month as remains unexpired shall be paid to the Court before the Judgment debtor is committed to the civil prison, and the subsequent payments shall be made to the Officer in charge of the Civil prison. On failure to pay such subsistence allowance on the part of the ~~Judgment-debtor~~ Decree-holder, the person detained shall be released from detention (Section 58, Civil Procedure Code). In G.O.No.P.7105-9 Pris. 15-20-66 dated 20th February 1923

NOTE—Contn. Sheet.

WD 04155—GPB—55,000—23-10-41

Serial No.

1923, hire for a mat and a blanket to a civil prisoner has been fixed by Government at the rate of 8 annas a month subject to a minimum of four annas for a fraction of a month, and it is further provided that hire for bedding according to that rate shall also be recovered along with the subsistence allowance by the Court and remitted to the Jail.

According to Rule 631 of the Jail Manual the scale of clothing and bedding to be supplied by the Jail authorities to a civil prisoner, when clothing and bedding is not provided by him or the ~~Judgment-debtor~~ Decree holder shall be two cotton cloths or one cotton suit consisting of trousers and coat. The Government have not so far fixed the rate at which hire should be paid for clothing supplied to a civil prisoner.

Adl-ul-Mulk Mr. Justice Ghani suggests the omission of this clause. He thinks that the decree holder pays according to a certain scale for the detention of the Judgment-debtor under the provisions of the Civil Procedure Code, and something else may not be added to what he has to pay under that code by a provision in the Prisons Act. Rajadharmaprasakta Mr. Justice Nageswara Iyer also considers this clause to be unnecessary. He thinks that the arrangement now in force which has gone on so long without any complaint by the prisoners may continue without subjecting the decree holder to further expenditure, and is therefore no need to alter the existing provisions.

Mr. Justice Venkatarangiengar is of opinion

Serial No.

opinion that the expression "subsistence allowance" in section 58 of the Code of Civil Procedure is wide enough to include allowance for food, clothing and bedding. If the expression "subsistence" allowance however is regarded only as referring to food and not bedding and clothing, he thinks it better to amend section 58 of the Code of Civil Procedure so as to include bedding and clothing also, and not to provide for it in the Prisons Act. He therefore thinks that this clause may be omitted and section 58 of the Code of Civil Procedure amended.

Rajadharmaprasakta Mr. Justice Singaravelu Mudaliar is not sure whether "subsistence Allowance" includes the cost of bedding and clothing, and he therefore considers and retention of the clause to be necessary.

The clause is substantially identical with the second paragraph of section 36 of the Prisons Act of 1870. It does not introduce anything new, nor does it impose on a decree-holder any liability to which he was not already subject under the old Prisons Act. There seems to be some difference of opinion, as is evident from the opinion the Judges, as to whether the "subsistence allowance" provided in the Civil Procedure Code includes the cost of bedding and clothing. The clause makes specific provision for the cost of such bedding and clothing, and thus supplements the provision of the Civil Procedure Code. It may be retained.

5. Clause 34(2)--This clause provides that civil

WD 04155—GPB—55,000—23-10-41

Serial No.

civil prisoners finding their own implements and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements or are maintained at the expense of the prison shall be subject to a deduction, to be determined by the Superintendent, for the use of implements and the cost of maintenance.

Rajadharmaprasakta Mr. Justice Nageswara Iyer, suggests that just as Government deducts a portion of the prisoner's earnings in consideration of the implements supplied, the subsistence charges incurred by the decree-holder may be deducted from the earnings and refunded to him, since in his opinion, subsistence charges are at least as important as the implements to enable a prisoner to work and follow any trade or profession.

The suggestion alters the existing law governing the relationship of decree holders and judgment-debtors under which a decree-holder is required to maintain the Judgment-Debtor when the latter is imprisoned at the instance of the former. If the suggestion is adopted a Judgment-debtor who follows his trade or profession will virtually eke out his own livelihood in the jail without any expense being incurred in that behalf by the decree holder It may not perhaps be expedient to introduce such a change in the relations of the decree-holder and the Judgment-debtor and the clause which is a reproduction of para 2 of section 37 of the old Prisons Act and sub-section (2) of section 34 of the Act of 1894, may stand as it is.

Serial No.

6. Clause 41. This clause provides that "due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that, so far as may be consistant with the interests of Justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person".

Adl-ul-Mulk Mr.Justice C.A.Ghani, suggests that some provision may be made in the clause to permit visitors to even convicted prisoners, though on a very restricted scale, so that a wife or a husband may have a chance of seeing the convict sometimes.

The clause is specially intended to meet the case of civil and unconvicted criminal prisoners in whos case there is an inherent necessity arising from the very nature of their position to see their friends, relatives or legal advisers either to arrange for the payment of their debts or to obtain advice from, or give instructions to, their legal advisers in a confidential manner in regard to the conduct of their defence. It is accordingly made obligatory under the clause that provision should be made for visits to civl and unconvicted criminal prisoners. The position of convicted prisoners, however, does not call for such visits, and it is not necessary therefore to make a mandatory provision in their case. The rules made under clause 58(23), which enables Government to regulate

WD 04155—GPB—55,000—23-10-41

Serial No.

regulate the transmission of appeals and petitions from prisoners and their communications with their friends, would meet the requirements of their situation. The wife or the husband as the case may be will hav opportunities under these rules of seeing the convict.

Rajadharmaprasakta Mr.Justice Nageswara Iyer, observes that though it may not strictly come within the scope of the Prison Bill, in the case of female prisoners arrested by the Police, in fairness, some arrangement should be made so that they may remain under the watch and care of females, and that this would prevent certain abuses to which arrested young females may be subjected.

II. CHILDREN BILL.

Clause 10(1).--This clause provides that "whoever for his own profit causes any child or, having the actual charge of or control over a child, allows that child, to be in any street, premises or place for the purpose of begging or receiving alms, or of inducing the giving of alms, shall be punishable with imprisonment of either descreption for a term which may extend to three months or with fine which may extend to one hundred rupees or with both.

Rajadharmaprasakta Mr.A.R.Nageswara Iyer, is of opinion that this clause is somewhat drastic. He considers that while it is unobjectionable to hold a person having charge of a child liable to conviction if he allows the child to beg for his own profit, the

Serial No.

the clause as it stands makes him liable to such conviction even if the child begs without his knowledge simply because he did not take proper care of the child and gave it opportunities to beg. He is of opinion that this needs modification. Rajadharmaprasakta Mr. Justice Singaravalu Mudaliar,J. agrees with him and considers that the clause requires consideration as suggested by him.

This clause is a reproduction of section 10(1) of the Bombay Children Act, 1924. It is similar to section 4(1) of the English Children and Young Persons Act of 1933 under which any person who causes or procures any child, or having the custody, charge, or care of such child allows him to be in any place for the purpose of begging is liable to a fine not exceeding twenty-five pounds or in default of payment of such fine to imprisonment, or in addition thereto, to imprisonment for any term not exceeding three months.

The object of the clause is to prevent beggary by children. It is proposed to secure this object by holding the person having the actual charge or control of child, whether as parent, guardian or otherwise, responsible for the acts of the child, whether the child acts with his consent or knowledge or not. If however it is considered that the provision is drastic, the burden of proving that the child was begging without his permission may be placed on the person charged with the offence as has been done under the English Act. Sub Section (2) of Section 4 of the

NOTE—Contn. Sheet.

WD 04155—GPB—55,000—23-10-41

Serial No.

the Children and Young Persons Act, 1933, provides--

"If a person having the custody, charge or care of a child or young person is charged with an offence under this section, and it is proved that the child or young person was in any street, premises, or place for any such purpose as aforesaid, and that the person charged allowed the child or young person to be in the street, premises or place he shall be presumed to have allowed him to be in the street, premises, or place for that purpose unless the contrary is proved".

A provision on the same lines would meet the objection raised by Rajadharmaprasakta Mr.Justice A.R. Nageswara Iyer

III. BORSTAL SCHOOLS BILL.

Clause II.--This clause empowers the Inspector General of Prisons to transfer from prison to a Borstal School persons undergoing transportation or imprisonment if he is satisfied that such persons, being within the limits of age within which they may be ordered to be detained in a Borstal School, might with advantage be detained in such school.

Mr.Venkataranga Iyengar, J. is not in favour of the Inspector General of Prisons being vested with powers of effecting such transfers, since he considers that if a court that is competent under clause 4 of the Bill to pass an order for detention in a Borstal School, has exercised its discretion and has refused to make such an order, it may not be proper for the Inspector General of Prisons to sit in Judgment over what the Court has done and transfer

Serial No.

the offender from the prison to the Borstal School, if in his judgment, he thinks that the offender might with advantage be detained in such school. Rajadharmaprasakta Mr. Justice Singaravelu Mudaliar,J, is also of the same opinion and he considers it necessary to provide that the Inspector General of Prisons may obtain the permission of the Court before effecting such transfer.

The clause corresponds to Section 10 of the Madras and Bengal Borstal Schools Act. It is similar to section 3 of the English Prevention of Crime Act, 1908, which empowers the Secretary of State to transfer prisoners from Jails to Borstal Schools. The clause is merely an enabling provision. It may well be that after a person has been ordered by the court to be sent to a prison instead of to a Borstal School, the subsequent conduct of the prisoner in the jail might show definite signs of imporvement and reformation, and a transfer to the Borstal School would be to his advantage. The clause accordingly empowers the authority who is in a position to watch the conduct of the prisoner in the Jail, viz. the Inspector-General of Prisons, to effect such transfers. The requirement, as suggested, that the Inspector General of Prisons should obtain the permission of the court before effecting such transfers would make the procedure somewhat cumbersome. If it is however considered necessary to limit the power of the Inspector General of Prisons, it may be made subject to the rules made by the Government in that behalf as in the Madras and Bengal Borstal Schools Acts.

NOTE—Contn. Sheet.

WD 04155—GPB—55,000—23-10-41

Serial No.

IV PROBATION OF OFFENDERS BILL.

1. Clause 4:--The clause empowers the court in any case in which a person is convicted of any offence punishable with not more than two years' imprisonment or fine or both and no previous conviction is proved against him, to release him after due admonition instead of sentencing him to any punishment.

Rajadharmaprasakta Mr. Justice Singaravelu Mudaliar points out that under clause 14 of the Bill the provisions of Section 562 of the Criminal Procedure Code would not be operative in areas where the Probation of offenders Act is in force, that the clause in question is restricted to offences punishable with not more than two years' imprisonment, whereas section 562 (1A) of the Criminal Procedure Code extends such privilege even to offences under sections 379 and 380 I.P.C. which are punishable with more than two years' imprisonment. He accordingly thinks that the clause is not as liberal as that in the Criminal Procedure Code.

Mr. Venkatarangaiengar, J. also considers that the clause is, in this respect, more restrictive in its scope and applicability than section 562 (1A) of the Code of Criminal Procedure and that there is no reason why it should be so. Considered from another aspect he is of opinion that the clause is more liberal than section 562(1A), in that the scope of the latter does not extend to offences under special and local laws although such offences are punishable with not more than two years' imprisonment and to offences punishable with fine only, while the former extends to all cases punishable with not more than two years' imprisonment

Serial No.

imprisonment or fine or both. He considers however that such liberalisation could be achieved by suitably amending Section 562 (1A) of the Code of Criminal Procedure itself.

2. Clause 5.—This clause empowers the Court to release on probation of good conduct any male person convicted of an offence not punishable with death or transportation for life, or any woman convicted of an offence of any kind.

Rajadharmaprasakta Mr. Justice Singaravelu Mudaliar considers these provisions to be more liberal than Section 562(1) of the Code of Criminal Procedure in that there is no condition of previous conviction and that a woman and a person under twenty-one years of age may be treated as on probation even if they commit offences punishable with death or transportation for life. He considers the bill to be necessary to give effect to these object, since a mere amendment of the Criminal Procedure Code will not be enough, as the Bill contains other provisions regarding the conditions of probation and the means to enforce them.

Adl-ul-Mulk Mr. Justice C.A. Ghani, however, is of opinion that the scope of the Clause should be restricted. He points out that under clause 4, which pertains to less serious offences, the condition of there being no previous conviction is imposed and that in fact till now a condition preceedent to claim the previlege is that the person should have had no previous conviction. He thinks therefore that clause 5 should

NOTE—Contn. Sheet.

WD 04155—GPB—55,000—23-10-41

Serial No.

should also contain this condition.

Mr. Venkataranga Iyengar, J. is also of opinion that clause 5 goes far beyond the scope of section 562(1) of the Code of Criminal Procedure by providing for release on probation of any male convicted of an offence not punishable with death or transportation for life and any woman convicted of an offence of any kind and by also providing that even persons against whom previous conviction is proved may be released on probation. He considers that, in the interests or society, the salutory provision with its limited scope that is contained in section 562 of Code of Criminal Procedure is quite enough and it is undesirable to extend its scope any further. He does not therefore find any necessity for the introduction of the Bill, which is intended to replace Section 562 of the Code of Criminal Procedure.

3. 2nd Proviso to clause 5. Adl-ul-Mulk

Mr. Justice C.A. Ghani, doubts whether it is desirable to have this proviso at all as it makes it obligatory to release a person under twenty-one years of age, if the offence committed is punishable with imprisonment not exceeding six months, whatever the circumstances and even when the commission is wilful and deliberate and vindictive in its nature.

Submitted for orders.

13/10

Law Secy.

Prisons Reforms Bills

General and Revenue Secretariat | File No. of 194 | [App. F. III—2

Serial No.

OCT 15 1942
No. 3217

The general principles of the Bills are agreed to by the learned Judges except that Mr. Justice Venkataranga Iyeng considers that Probation of Offenders Bill is unnecessar The other Judges do not take this view. Clause 4 of the Act may be liberalised by making it applicable to offences of theft, cheating and dishonest misappropriation which are included in Section 562(iA) of the Code of Criminal Procedure. Clause 5 is purposely made more liberal than Section 562(1). Mr. Justice Singaravelu Mudaliar's reading of the clause that males under 21 convicted of any offence can be released on probation is not correct. It applies to them only if the offence is punishable with not more than 6 months These details may however be considered after the Bill is introduced into the Legislative Council.

Suggestions made regarding some clauses of the other Bills may not be acceptable for reasons given above. However the suggestion made for suitably amending Section 11 of Borstal Schools Bill so that the I.G. of Prisons may pass orders in consultation with the convicting Court when he considers it desirable to transfer prisoners to Borstal School, and the suggestion regarding amending Section 10 of the Children Act may be ~~xxkxxxxxxx~~ considered after the Bills are introduced into the Legislative Council.

NOTE—Contn. Sheet.

15-10-42

The discussion in Council may be watched & the entire question examined before publication in Gazette for L.C.

15/10

W D 04156—GPB—55,000—23-10-41

Serial No.

I. Previous Bill :-

$3 definition

(c) may be omitted

since (i) it may

not be possible

to open a separate

jail for under trials

& sub jails have

acquired a definite

meaning now,

(i) Provided for

including sub jails

meant for industrial

& Reformation framing

~~for~~ Ch VI & VII and

provisions are

made for con-

victed criminals

also, and

(ii) in any case

Rules may be framed

extending the provisions

of the Act to sub jails

intended to be

opened for under

trial or unconvicted

Prison Reforms Bills

venue | File No. | of 194 | [App. F. III-2

Serial No.

prisoners etc as provided by

$ 47 (6) may be suitably amended to make it clear that rigorous cellular confinement as distinct from solitary confinement is a punishment

II Abolition of Offenders Bill: —

S 4 may be amended to include the offences mentioned in S 562 (A) Cr P C

Please strike the point at the right of your discussion and redraft

Yes

Mr Law, Law & Home

Please furnish a copy of the Bills and also extract of Sec 562 (A) Cr P C in the file for reference

Cus 6-11-42

Cus 14-10-42

SECY. LAW DEPT. 1942 GOVT OF MYSORE

Pages 20 to 59 of the Book placed before

NOTE—Cont. Sheet

Submitted with copies of the four Bills together with an extract of Section 562 (a) Cr P C.

WD 04155—GPB—55,000—23-10-41

Law Secy)

Prison Reforms Bills

1308

File No. of 194

General and Revenue Secretariat

Serial No.

OFFICE OF THE MINISTER FOR LAW
NOV 11 1942
No. 4098

Submitted

Cus
11-11-42

Minister of Law

11/11/42

Please see side note

Yours sincerely

20/11

please put up amendments as personally instructed

Cus
20-11-42

No. P. 1197 Punch Work & 17.9.1

G. R. S. App. F. G. 3.

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*

To

The Registrar, High Court.

Subject:— Report of the Prison Reforms Committee — Draft Bills suggested by them

Sir,

I am directed to request you to be so good as to obtain & communicate the views and suggestions of the Judges of the High Court on the marginally noted four draft Bills contained in the Report of the Prison Reforms Committee a copy of which is herewith sent for ready reference. The said Bills are to be submitted to Council before

I have &c.,

for Secy to Govt, Law Dept

1. Prisons Bill
2. Borstal School Bill
3. Children Bill
4. Probation of Offenders Bill.

WD 0186—GPB—15,000—6-9-34

No.P1197 17 September 1941.

Time Work.

The Registrar,

High Court of Mysore,

Bangalore.

Subject: Report of the Prison Reforms Committee -- Draft Bills suggested by them.

S i r,

I am directed to request you to be so good as to obtain and communicate the views and suggestions of the Judges of High Court on the marginally noted four draft Bills contained in the Report of the Prison Reforms Committee, a copy of which is herewith sent for ready reference. The said Bills are to be placed before the ensuing sessions of the Legislative Council coming of by the second week of December and as such, the suggestions may be kindly forwarded to Government before that date.

1) Prisons Bill.
2) Borstal School Bill.
3) Children Bill.
4) Probation of Offenders Bill.

I have the honour to be,
Sir,
Your most obedient servant,

For Secretary to Government,
-Law Department.

TN-2)

Urgent

No. P- 4923/Pris

29th April 1942.

Bangalore.

The Registrar,
High Court of Mysore,
Bangalore.

Subject :- Report of the Prison Reforms Committee -
Draft Bills suggested by them.

Sir,

I am directed to invite reference to this Office letter No.P.1197 dated 17th September 1941 on the above subject and to request you to be so good as to obtain and forward the views of the Judges of the High Court on the Draft Bills mentioned therein.

The matter may kindly be treated as urgent as the Bills will have to be taken up in the ensuing sessions of the Representative Assembly and Legislative Council.

I have the honour to be,
Sir,
Your most obedient servant,

(Draft) May 29/4
Secretary to Government,
Law Department.

Cpg.

Second Reminder

Very urgent

Appendix F G—1]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *19*

Date of issue 16/5/42

Signed by Dr. M.K.R.

Section

File No.

Serial No.

No. P 5215

To

The Registrar,
High Court of
Mysore, Bangalore

Subject: Report of the Prison Reforms Committee - Draft Bills Suggested by them -

Sir,

I am directed to invite reference to this office letter No. P. 1197 dated 17.9.41 and the subsequent reminder dated 29.4.42 on the above subject and to

List of enclosures .....

Copied by .....

Examined by .....

request you kindly to forward the views of the Judges of the High Court on the Draft Bills enclosed therein.

The matter may kindly be treated as very urgent, as the Bills have to be taken up at the ensuing Sessions of the R. A. Assembly

I have etc

3/16/15

for Secy to Govt.
Law Deptt.

Ia

3rd Reminder

Appendix F G—1]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *19*

Date of issue 13/7/42

Signed by Dr. M.K.V

List of enclosures.....

Copied by .....

Examined by .....

Section

File No.

Serial No.

No. P3157.

To

The Keeper, Hebbe Courthall

Mysore, Bangalore

Subject:- Report of the Prison Reforms Committee- Draft Bills suggested by them

Sir,

I am directed to invite kind reference to this office letter no P 1494 dt 17-9-41 and to the subsequent reminders ending with no P. 5215 dt 16-5-42 on the above subject,

and to request you to take
such steps as to obtain and
forward me name & office Judges
after High Court at a very
early date.

Thanking you.

Yours faithfully

for Secretary to Govt.

9/7/42

G. R. S. App. F. G. 3.

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*)

D.O. No P922 & 7.8.42

Dear Sir,

I am ~~directed~~ desired to invite kind reference to this office letter No P 1197 Dated 17.9.41 and to subsequent Reminders ending with No. P 315 Dated 13th July 1942 ~~and~~ on the matter of the Bills recommended by the Prison Reforms Committee, and to request you to be so good as to obtain and Communicate the views and Suggestions of the Judges of the High Court. ~~in the matter at an early date~~ The Reply may kindly be expedited in View of the fact that the Bills will have to be placed before the H.H. in Oct'

~~Yours Sincerely~~

Yours Sincerely

7/8

To

The Registrar,
High Court of Mysore,
Bangalore

WD 0282—GPB– 22,500—14-3-38

August 1942.

D.O.No.P 922

I am desired to invite kind reference to this office letter No.P.1197 dated 17th September 1941 and to subsequent reminders ending with No.P.315 dated 13th July 1942 in the matter of the Bills recommended by the Prison Reforms Committee, and to request you to be so good as to obtain and communicate the views and suggestions of the Judges of the High Court.

The reply may kindly be expedited in view of the fact that the Bills will have to be placed before the Representative Assembly in October 1942.

To

N. Samiengar, Esq., B.A., LL.B.,
Registrar,
High Court of Mysore,
Bangalore.

App. F. XI—4]

File No.

Serial No.

Sus. Regr. No.

Shall a reminder issue to the Registrar, High Court of Mysore? P.4923.

for a reply to this Office No. , dated the 29th April 42

Subject.

Report of the Prison-Reforms Committee - Draft Bills Suggested by them.

A reminder was issued to the Regr. on 29.4.42

Subd. note a Second reminder

Ja 16/5 — Issue M. 16/5

Subd. note a 3rd. reminder.

Ja 13/6

REMINDERS

No.	Date	
P.4923	29.4.42	
P 5215	16.5.42	

WD 03612—G.P.B—3,750—13-7-35

III Reminder

Immediate

VI. G. 7

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

GENERAL AND REVENUE SECRETARIAT.

No. dated the June 1942

(Pers)

REPLY.

No. , dated the 193

To

The Registrar,
High Court of
Mysore, Bangalore

To

The Secretary to the Government of
H. H. the Maharaja of Mysore,
.....Department.

SUBJECT.

Report of the Prison-Reforms Committee-Draft Bills suggested by them.

SIR,

I am directed to invite attention to the marginally noted communication and to request that the Government of His Highness the Maharaja may be informed, in the column opposite, of the cause of delay in furnishing a reply and of the approximate date on which reply may be expected.

I am also to request that the reply to this reminder may be sent not later than the

I have, etc.,

for Secretary to Government,
Law Department.

*No. 4923 , dated 29-4-42

this office No

Views of the Judges of the High Court on the Draft Bills mentioned therein may be sent immediately

*Previous reminders
1) No. P. 4923 dated 29. 4. 42
2) No. P. 5215 " 16. 5. 42

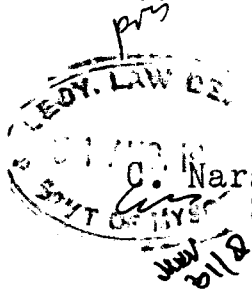
WD 74—GBPM—5,000 copies—14-7-31.

B. O. C. No. 72 / 1308 P
D. Dis. 4243
Encl. one

HIGH COURT OF MYSORE,

Bangalore, 29th August 1942.

FROM N. SAMAIENGAR, ESQ., B.A., LL.B.,
~~T. SHAMIENGAR, Esq., B.A., B.L.,~~
Registrar, High Court of Mysore.



To C. Narayanaswami Naidu, Esq., B.A., B.L.,
Secretary to Government,
Law Department, BANGALORE.

SIR,

With reference to your letter No.1197/Pris, dated 17th September 1941, inviting the views and suggestions of the Judges of the High Court in regard to draft Bills proposed by the Prison Reform Committee I am directed to enclose copies of the minutes of the Puisne Judges and to say that the Chief Justice regrets that the file has come to him so late after circulation that he is not able to offer opinions on the Bills

I have the honour to be,
Sir,
Your most obedient servant,

N. Samaiengar
REGISTRAR.

Am
BSS.

MINUTES OF THE JUDGES.

Adl-ul-Mulk

MR. JUSTICE ABDUL GHANI :- (10 May 1942).

Introduction of any measure or piece of legislation is a question of policy with which Courts are not ordinarily concerned; their scope is generally confined to interpretation of statutes, if there is any dispute, and to the administration of law as it stands. It is inadvisible, I think, for Judges to express any opinion on the scope or interpretation of any bill before it is passed and is brought up in Court in litigation. It may transpire that any opinion given on a cursory examination of a bill may differ from the decision actually to be given when the matter is threshed out in Court with the assistance of opposing Counsel. It may thus be awkward to be asked to express views which may be revised later. Similarly, it is hardly likely that the views of the Judges in the matter of the drafting of the bills can have been called for.

If the idea is to obtain the views of the Judges, as citizens of the State, in regard to the desirability of introducing legislation on the lines indicated in the draft bills and the utility or otherwise of such legislation, I may say that a committee appointed for the purpose has, after mature consideration, recommended the measures, which appear to be beneficial though costly.

It is desirable to provide for the separation and segregation of different types of prisoners; but to provide for separate accommodation based on sex, age and the different varieties of

prisoners, with the necessary staff for each will be costly, though desirable. Similarly, to provide for certified schools, Juvenile Courts, refuge homes, Borstal Schools and other institutions contemplated in the bills, funds may not be forthcoming at present. The bills may run through the usual course and become laws to be extended to select areas as and when funds permit. This course is often adopted. The bills certainly contemplate the removal of what were agitated as defects in prison administration, and make provision for the protection of children and their proper upbringing when they are so unfortunate as to be in unwholesome company or surroundings and tend to become criminals. The bills contemplate co-operation from philanthropic institutions and persons, which, I am afraid, is doubtful. Government will have to bear the burden mostly, I think. Similarly, I am not sure of the desirability of placing out children with strangers, who may instead of performing their obligations treat the child as a servant who costs only boarding and lodging.

Cl. 26(3) in the Prisons Bill may perhaps be omitted. It is not apparent why a prisoner may not be discharged against his will.

In Cl.27(1), the words "seeing, or" in line four may perhaps be omitted. The rest of the clause is quite sufficient to carry out the object of effective separation or female from male prisoners.

Cl. 33(2) may be omitted, I think. A

decree-holder pays according to certain scale for the detention of the judgment-debtor. Something else may not be added to what he has to pay under the Code of Civil Procedure, by a provision in the Prisons Act. There is no particular reason either when other civil prisoners and criminal prisoners similarly placed get bedding and clothing, when necessary, free.

In Cl. 41, some provision may perhaps be made to permit visits to even convicted prisoners; though on a very restricted scale. A wife or a husband may thus have a chance of seeing the convict sometimes.

The Mysore Probation of Offenders Bill is intended to replace Section 562 of the Code of Criminal Procedure by more liberal provisions. There appears to be an omission in Section 5,which, as it stands, permits any offender, not necessarily a first offender, to be released on his entering into a bond. In Section 4, which pertains to less serious offences, the words "and no previous conviction is proved against him" appear. In fact till now a condition precedent to claim the privilege is that the person snould not have any previous conviction. Section 5 also should, I believe, contain the condition.

I doubt whether it is desirable to have the second proviso to Cl. 5(1) which makes it obligatory to release a person under 21 years of age, if the offence committed is punishable with imprisonment not exceeding six months, whatever the circumstances

and even when the commission is wilful and deliberate and vindictive in its nature.

Rajadharma Prasakthi

MR. JUSTICE NAGESVARA IYER :-(26 July 1942).

I have had the advantage of reading the interesting notes of my learned brothers and, I do not think I need add much to it. The committee after a careful consideration of the questions involved and after inspecting the existing institutions, an advantage which we do not have, have made recommendations of a wide and varied nature. They will I suppose be given effect to by Government as and when finances permit. This is a matter for the Government to decide. If they decide upon any particular course and formulate their views, I think, the High Court would be in a better position to offer its views. However I shall add a few suggestions to those of my learned brothers.

The provision in Section 33 requiring the decree-holder to pay the cost of clothing and bedding supplied to the prisoner is unnecessary. The arrangement now in force which has gone on so long without any complaint by the prisoners may in my opinion continue, without subjecting the decree-holder, who stands to lose what he has to get from the prisoner under the decree, to further expenditure. After the law relating to arrest was amended, a judgment-debtor can be arrested and committed to prison mainly if he is found to have acted fraudulently or to have acted with the idea of depriving the decree-holder of the fruits of

his decree (R.40 of O.21). There seems to be, therefore, no need to alter the existing provisions.

Re: Section 34(3) (it ought to be sub-section 2 perhaps) just as Government deducts a portion of the prisoner's earnings in consideration of the implements supplied, the subsistence charges incurred by the decree-holder may be deducted from the earnings and refunded to him. The subsistence charges are at least as important as the implements to enable a prisoner to work and follow any trade or profession.

Though it may not strictly come within the scope of the Prisons Bill, in the case of females arrested by the Police, in fairness, some arrangement should be made so that they may remain under the watch and care of females. That would prevent certain abuses to which arrested young females may be subjected.

Section 10(1) of the Children Bill is somewhat drastic. If a person having charge of a child allows that child to beg he is liable to be convicted. If he allows that for his own profit or intentionally allows the child to do so, the provision made would be unobjectionable. As the draft section reads, even if a child without the guardian's knowledge begs, he may be liable for conviction because he did not take proper care of the child and gave it opportunities to beg. That needs modification. Section 11 also seems to need modification.

Rajadharma Prasakthi

MR. JUSTICE SINGARAVELU MUDALIAR : (8th August 1942).

The proposals of the Prisons Reform Committee intended to treat various classes of prisoners according to their status, age and degree of delinquency, are much in advance of the present conditions. Some of them, for instance the Borstal School System and Probation system, have been under consideration of Government since the publication of the Report by the Royal Commissions. They deserve to be implemented if Government can find the means to do so -- especially the proposals which are intended to give a helping hand to the criminal to reform himself.

I have a very few remarks to make regarding the draft Bills and I have had the advantage of reading the opinions of my learned brothers regarding them. In Section 33 cl.(1) of the Prisons Bill the word "convicted" is perhaps a slip. The word ought to be "unconvicted".

In cl.(2) of Section 33 provision is made for the Superintendent to release the civil prisoners if the charges for bedding and clothing are not paid within 48 hours of demand by the decree-holder or his legal representative. Provision is already made for recovering the cost of bedding under paragraph 254 of the Criminal Civil Rules of Practice. There is no rule regarding charges for clothing. Perhaps a rule may have to be made fixing the charges for clothing under the Rules of Practice. Vide Vol.1 page 84.

It seems to be necessary to retain this clause as it merely enables the Superintendent to release the prisoner if the charges for bedding

and clothing are not paid. Under the Code of Civil Procedure the Superintendent can release the prisoner if "subsistence allowance" is not paid. I am not sure if that expression would include the cost of bedding and clothing. This clause merely adopts the provision in the present Act with a few additions and no difficulty has been felt in its application.

Under Mysore Probation of Offenders Bill, cl. 14, the provisions under Section 562 Code of Criminal Procedure are made inoperative in areas in which the former is to be operative. Cl.4 of this Bill restricts its application to offences punishable with not more than 2 years imprisonment, whereas Section 562(1A) of the Code of Criminal Procedure extends such privilege to offences under Sections 379 and 380 I.P.C. which are punishable with more than 2 years imprisonment. In this sense the provision in the Bill is not as liberal as that in the Code of Criminal Procedure.

Clause 5 of this Bill is more liberal than Section 562(1) of the Code of Criminal Procedure in that the condition of previous conviction is not in it and also a woman and a person under 21 years of age may be treated as on probation even if they commit offences punishable with death or transportation for life. To give effect to this object it is necessary to have this enactment. A mere amendment of the provisions of the Code of Criminal Proecure Section 562 will not be enough, since the bill contains other provisions regarding the conditions of probation and the means to

enforce them

Mysore Borstal Schools Bill. In cl.11, the Inspector-General of Prisons is given power to transfer a person from prison to a Borstal School. With regard to a person convicted after the Act comes into force, there may arise a conflict between the Court acting under cl.6 and the Inspector-General of Prisons, for the latter can transfer a person to a Borstal School in spite of the Court thinking otherwise. It seems therefore necessary to provide that the Inspector-General of Prisons may obtain the permission of the Court before transferring. The same provision may be made regarding the persons convicted before the Act comes into force."

The Mysore Children's Bill - Cl.10 of this Bill requires consideration as suggested by Nagesvara Iyer J.

MR. JUSTICE VENKATA RANGA IYENGAR:- (24 May 1942

I agree with Abdul Ghani J. that it is not desirable that Judges should offer at this stage any criticism or comment on the several provisions in the proposed Bills. But there may not be any objection to expressing our opinion as regards the desirability or otherwise of introducing into Mysore the proposed Bills. Perhaps, that was what was intended by the Government when they invited the views of the Judges on those draft Bills.

Inasmuch as the Prisons Act of 1870 that is now in force in Mysore is defective in various

respects and has become out of date, as observed by the Committee on Prison Reforms in Mysore. it is necessary to replace it by the proposed Mysore Prisons Bill, which appears to have been drafted with care, if I may say so with very great respect. The only provision, regarding which I wish to say something in the proposed Mysore Prisons Bill, is Section 33. In Clause (1) of that Section the expression "convicted criminal prisoner" appears to be a misprint and it ought to be "unconvicted criminal prisoner". Clause (2) of that section is a reproduction of the second paragraph in Section 36 of Act XXVI of 1870, with a few alterations. I am inclined to think that that clause ought to be deleted, inasmuch as it is out of place in the Prisons Act. The statutory enactment, in which there should be a provision regarding the release of a civil prisoner on the ground of non-payment by the decree-holder of the necessary charges for the detention of the judgment-debtor in the civil jail such as subsistence allowance, hire for bedding and hire for clothing is, I think, the Code of Civil Procedure and not the Prisons Act, because it is under the provisions of the Code of Civil Procedure that a judgment-debtor will be detained in the civil prison. As a matter of fact, we find such a statutory provision in Section 58 of the Code of Civil Procedure, according to which a person detained in the civil prison in execution of a decree shall be released from such detention on the omission by the person, on whose application he has been so detained, to pay subsistence allowance. I am inclined to interpret

the expression "subsistence allowance" in Section 58 of the Code of Civil Procedure as including allowance for his food, clothing and bedding. That appears to me to be the intention of the Legislature when it provided in Section 57 of the Code of Civil Procedure that the Government may fix scales, graduated according to rank, race and nationality, of monthly allowance payable for the subsistence of judgment-debtors. According to Rule 39 of Order XXI of the Code of Civil Procedure, the subsistence allowance shall be supplied by the party, on whose application the judgment-debtor has been arrested, by monthly payments in advance before the first day of each month and the first of the payments in advance for such portion of the current month as remains unexpired shall be paid to the Court before the judgment-debtor is committed to the civil prison and the subsequent payments (if any) shall be made to the officer in charge of the civil prison. The Government have fixed the scale of allowance payable for the subsistence of judgment-debtors at Rs.20/- per mensem for first class and Rs.12/- per mensem for second class. In G.O. P.7105-9/Pris. 15-20-66, dated 20th February 1923, hire for a mat and a blanket to a civil prisoner was fixed by the Government at the rate of 8 annas a month, subject to a minimum of 4 annas for a fraction of a month and by the same Government Order, it is provided that hire for bedding according to that rate shall also be recovered along with the subsistence allowance by the Court and remitted to the Jail. According to paragraph 631 of the Mysore Jail Manual, Volume I, the scale of clothing and bedding to be supplied by the Jail authorities to a civil prisoner, when

clothing and bedding is not provided by him or by the decree-holder, shall be two cotton cloths or one cotton suit consisting of trousers and coat. I do not believe that the Government have so far fixed the rate at which hire should be paid for clothing supplied to a civil prisoner. If it is intended that a decree-holder should, in addition to subsistence allowance and hire for bedding, also pay hire for clothing supplied to a civil prisoner by the Jail authorities, the Government may fix such hire, just as they did in the case of bedding and also direct that such hire may be recovered along with the subsistence allowance by the Court and remitted to the jail. It is thus seen that it will be convenient to include in the expression "subsistence allowance" used in Section 58 of the Code of Civil Procedure, hire for bedding and clothing also. If the expression "subsistence allowance" in that section was not intended to cover the hire for bedding and clothing also, that expression in Section 58 of the Code may be got amended so as to include hire for bedding and clothing. - That appears to me to be the proper thing to be done. I am therefore of the view that Clause (2) of Section 33 in the proposed Mysore Prisons Bill may be deleted, and Section 58 of the Code of Civil Procedure may be suitably amended.

The Probation of Offenders Bill now sought to be introduced into Mysore appears to me to be unnecessary. The object of the proposed Bill seems to be to extend to adult offenders the system of

probation allowed for juveniles under the proposed Mysore Children Bill. The reasons given by the Committee on Prison Reforms in Mysore for the intrc duction of the proposed Bill are as follows :- "It thus provides a useful alternative to unconstructive imprisonment. Treatment on probation has been found in the West to be a most successful method of dealing with a certain type of offenders; and given effective arrangements for supervision and guidance, there is no reason why it should not prove equally successful in this country". With great respect, I may be permitted to say in this connection that conditions in the West are different from what they are in this country. There is already Section 562(1-A) of the Code of Criminal Procedure which provides for first offenders being released after due admonition in certain limited classes of cases. While, according to Section 562(1-A) of the Code of Criminal Procedure, first offenders may be released after due admonition in cases of theft, theft in a building, dishonest misappropriation and cheating, although those offences are punishable with imprisonment for more than two years, Section 4 in the proposed Probation of Offenders Bill restricts its application only to offences punishable with not more than two years' imprisonment or fine or both. There is no reason why in that respect Section 4 in the proposed Bill should be more restrictive in its scope and applicability than Section 562(1-A) of the Code of Criminal Procedure. In another aspect, Section 4 in the proposed Bill appears to be more liberal than Section 562(1-A) of the Code of

Criminal Procedure in providing that first offenders may be released after due admonition in any case in which a person is convicted of any offence punishable with not more than two years' imprisonment or fine or both. In that respect the proposed alteration appears to me to be necessary because, as Section 562(1-A) stands at present, Courts cannot exercise powers under that section in cases of offences under special and local laws, although such offences are punishable with not more than two years' imprisonment, nor can that section, as it stands at present, be made use of in cases of offences punishable only with fine. But that object can very well be achieved by suitably amending Section 562(1-A) of the Code of Criminal Procedure.

As regards the release of adults on probation of good conduct, there is Section 562(1) of the Code of Criminal Procedure which is applicable only to cases where any person not under 21 years of age is convicted of an offence punishable with imprisonment for not more than 7 years or when any person under 21 years of age or any woman is convicted of an offence not punishable with death or transportation for life and no previous conviction is proved against the offender. Section 5 in the proposed Probation of Offenders Bill goes far beyond the scope of Section 562(1) of the Code of Criminal Procedure, by providing for release on probation of good conduct of any male convicted of an offence not punishable with death or transportation for life and/ any woman convicted of an offence of any kind and by also providing that even persons against whom previous conviction is proved, may be released

on probation of good conduct. I am of opinion that, in the interests of society, the salutory provision with its limited scope that is contained in Section 562 of the Code of Criminal Procedure as regards the release on probation or good conduct is quite enough and, in my opinion, it is undesirable to extend its scope any further. I do not therefore find any necessity for the introduction of the proposed Probation of Offenders Bill which is intended to replace Section 562 of the Code of Criminal Procedure.

The proposed Borstal Schools Bill appears to be a necessary piece of legislation to be introduced into Mysore. I entirely agree with the following object underlying the proposed legislation, as stated by the Committee on Prison Reforms :- "The Borstal Schools Act deals with offenders between the ages of sixteen and twenty-one years, who are likely with proper training to turn out well. Instead of subjecting them indiscriminately to the hardening process of imprisonment, it selects such of them as are likely to be benefitted thereby to undergo a course of corrective and reformative treatment and training in a residential institution on public school lines". The only section in the proposed Bill regarding which I have to say something, is Section 11, which gives to the Inspector-General power to transfer from prison to a Borstal School persons undergoing transportation or imprisonment in consequence of sentences passed either before or after the commencement of the Act. Thoug there cannot be much objection to the Inspector-

General

Inspector-General exercising his power under that Section as regards persons undergoing ~~im~~ transportation or imprisonment in consequence of sentences passed before the commencement of the Act, I am not in favour of empowering under that section the Inspector-General to transfer to the Borstal School persons undergoing transportation or imprisonment in consequence of sentences passed after the commencement of the Act. After the commencement of the Act, if a Court that is competent under Section 6 of the Act to pass an order for detention in a Borstal School, has exercised its discretion and has refused to make any such order, it may not be proper for the Inspector-General to sit in judgment over what Courts have done and transfer the offender from the prison to the Borstal School if, in his judgment, he thinks that the offender might with advantage be detained in such school.

The proposed Children Bill appears to me to be a useful measure of legislation and may be introduced with advantage. I am also of the opinion that, for the reasons given by the Committee, the Mysore Juveniles Act XVI of 193° requires to be replaced by a new measure on suitable lines, such as the proposed Children Bill, which is drafted mainly on the lines of the Bombay Children Act of 1924 as amended from time to time.

MR. JUSTICE SUBRAHMANYA AIYAR :- (15 August 1942)

The Prisons Act as in force in Mysore is an old Act of British India which has been replaced there by Act IX of 1894 and it is desirable to

adopt in Mysore also a Prison Law similar to Act IX of 1894. The clauses of the Bill call for no remarks as they follow the Indian Act. Even Clause 33 regarding which some of my learned brothers have commented is similar to Section 33 in the Indian Act and this has been in practice in British India for nearly 50 years without creating any difficulty.

The other three bills are necessary measures of legislation for the prevention of crime by youths and reformation of young offenders. They follow in the main Acts in force in British India and may be adopted. The provisions of the Probation of Offenders Bill are somewhat more liberal than Section 562 of the Code of Criminal Procedure. If the discretion is properly exercised by the Courts, the measure may prove to be a successful method of reforming a certain type of offenders.

Copies

T. Saiaengar
Registrar

29.8.42